

1 AN ACT
2 RELATING TO CHILDREN; AMENDING A PROVISION OF THE CHILDREN'S
3 CODE TO CLARIFY TERMINATION OF PARENTAL RIGHTS.
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 Section 1. Section 32A-4-29 NMSA 1978 (being Laws
7 1993, Chapter 77, Section 123, as amended) is amended to
8 read:

9 "32A-4-29. TERMINATION PROCEDURE. - -

10 A. A motion to terminate parental rights may be
11 filed at any stage of the abuse or neglect proceeding. The
12 proceeding may be initiated by any of the following:

- 13 (1) the department;
14 (2) a licensed child placement agency; or
15 (3) any other person having a legitimate
16 interest in the matter, including the child's guardian ad
17 litem, a petitioner for adoption, a foster parent or a
18 relative of the child.

19 B. The motion for termination of parental rights
20 shall be signed, verified by the moving party and filed with
21 the court. The motion shall set forth:

22 (1) the date, place of birth and marital
23 status of the child, if known;

24 (2) the grounds for termination and the
25 facts and circumstances supporting the grounds for

1 termination;

2 (3) the names and addresses of the persons
3 or authorized agency or agency officer to whom custody might
4 be transferred;

5 (4) whether the child resides or has
6 resided with a foster parent who desires to adopt this
7 child;

8 (5) whether the motion is in contemplation
9 of adoption;

10 (6) the relationship or legitimate interest
11 of the moving party to the child; and

12 (7) whether the child is subject to the
13 federal Indian Child Welfare Act of 1978 and, if so:

14 (a) the tribal affiliations of the
15 child's parents;

16 (b) the specific actions taken by the
17 moving party to notify the parents' tribes and the results
18 of the contacts, including the names, addresses, titles and
19 telephone numbers of the persons contacted. Copies of any
20 correspondence with the tribes shall be attached as exhibits
21 to the petition; and

22 (c) what specific efforts were made to
23 comply with the placement preferences set forth in the
24 federal Indian Child Welfare Act of 1978 or the placement
25 preferences of the appropriate Indian tribes.

1 C. A parent who has not previously been a party
2 to the proceeding shall be named in the motion and shall
3 become a party to the proceeding unless the court determines
4 that the parent has not established a protected liberty
5 interest in his relationship with the child.

6 D. Notice of the filing of the motion,
7 accompanied by a copy of the motion, shall be served by the
8 moving party on all other parties, the foster parent,
9 preadoptive parent or relative providing care for the child
10 with whom the child is residing, foster parents with whom
11 the child has resided for six months within the previous
12 twelve months, the custodian of the child, any person
13 appointed to represent any party and any other person the
14 court orders. Service shall be in accordance with the Rules
15 of Civil Procedure for the District Courts for the service
16 of motions in a civil action in this state, except that
17 foster parents and attorneys of record in this proceeding
18 shall be served by certified mail. The notice shall state
19 specifically that the person served shall file a written
20 response to the motion within twenty days if the person
21 intends to contest the termination. In any case involving a
22 child subject to the federal Indian Child Welfare Act of
23 1978, notice shall also be sent by certified mail to the
24 tribes of the child's parents and upon any "Indian
25 custodian" as that term is defined in 25 U.S.C. Section

1 1903(6). Further notice shall not be required on a parent
2 who has been provided notice previously pursuant to Section
3 32A-4-17 NMSA 1978 and who failed to make an appearance.

4 E. If the identity or whereabouts of a person
5 entitled to service are unknown, the moving party shall file
6 a motion for an order granting service by publication
7 supported by the affidavit of the moving party or his agent
8 or attorney detailing the efforts made to locate the person
9 entitled to service. Upon being satisfied that reasonable
10 efforts to locate the person entitled to service have been
11 made and that information as to the identity or whereabouts
12 of the person is still insufficient to effect service in
13 accordance with the Rules of Civil Procedure for the
14 District Courts, the court shall order service by
15 publication pursuant to the Rules of Civil Procedure for the
16 District Courts.

17 F. After a motion for the termination of
18 parental rights is filed, the parent shall be advised of the
19 right to counsel unless the parent is already represented by
20 counsel. Counsel shall be appointed, upon request, for any
21 parent who is unable to obtain counsel due to financial
22 reasons or, if in the court's discretion, the interests of
23 justice require appointment of counsel.

24 G. The court shall assure that a guardian ad
25 litem represents the child in all proceedings for the

1 termination of parental rights.

2 H. When a motion to terminate parental rights is
3 filed, the moving party shall request a hearing on the
4 motion. The hearing date shall be at least thirty days, but
5 no more than sixty days, after service is effected upon the
6 parties entitled to service under this section.

7 I. In any action for the termination of parental
8 rights brought by a party other than the department and
9 involving a child in the custody of the department, the
10 department may:

11 (1) litigate a motion for the termination
12 of parental rights that was initially filed by another
13 party; or

14 (2) move that the motion for the
15 termination of parental rights be found premature and
16 denied.

17 J. When a motion to terminate parental rights is
18 filed, the department shall perform concurrent planning.

19 K. When a child has been in foster care for not
20 less than fifteen of the previous twenty-two months, the
21 department shall file a motion to terminate parental rights,
22 unless:

23 (1) a parent has made substantial progress
24 toward eliminating the problem that caused the child's
25 placement in foster care; it is likely that the child will

1 be able to safely return to the parent's home within three
2 months; and the child's return to the parent's home will be
3 in the child's best interests;

4 (2) the child has a close and positive
5 relationship with a parent and a permanent plan that does
6 not include termination of parental rights will provide the
7 most secure and appropriate placement for the child;

8 (3) the child is thirteen years of age or
9 older, is firmly opposed to termination of parental rights
10 and is likely to disrupt an attempt to place him with an
11 adoptive family;

12 (4) a parent is terminally ill, but in
13 remission, and does not want his parental rights to be
14 terminated; provided that the parent has designated a
15 guardian for his child;

16 (5) the child is not capable of functioning
17 if placed in a family setting. In such a case, the court
18 shall reevaluate the status of the child every ninety days
19 unless there is a final court determination that the child
20 cannot be placed in a family setting;

21 (6) grounds do not exist for termination of
22 parental rights;

23 (7) the child is an unaccompanied, refugee
24 minor and the situation regarding the child involves
25 international legal issues or compelling foreign policy

1 issues; or

2 (8) adoption is not an appropriate plan for
3 the child.

4 L. For purposes of this section, a child shall
5 be considered to have entered foster care on the earlier of:

6 (1) the date of the first judicial finding
7 that the child has been abused or neglected; or

8 (2) the date that is sixty days after the
9 date on which the child was removed from the home.

10 M The grounds for any attempted termination
11 shall be proved by clear and convincing evidence. In any
12 proceeding involving a child subject to the federal Indian
13 Child Welfare Act of 1978, the grounds for any attempted
14 termination shall be proved beyond a reasonable doubt and
15 shall meet the requirements set forth in 25 U.S.C. Section
16 1912(f).

17 N. When the court terminates parental rights, it
18 shall appoint a custodian for the child and fix
19 responsibility for the child's support.

20 O. In any termination proceeding involving a
21 child subject to the federal Indian Child Welfare Act of
22 1978, the court shall in any termination order make specific
23 findings that the requirements of that act have been met.

24 P. A judgment of the court terminating parental
25 rights divests the parent of all legal rights and privileges

1 and dispenses with both the necessity for the consent to or
2 receipt of notice of any subsequent adoption proceeding
3 concerning the child. A judgment of the court terminating
4 parental rights shall not affect the child's rights of
5 inheritance from and through the child's biological
6 parents. " _____

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